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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/725,109	12/01/2003	Dennis J. May	010930.00113	3336

22908 7590 09/08/2004

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EXAMINER

SIPOS, JOHN

ART UNIT PAPER NUMBER

3721

DATE MAILED: 09/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/725,109	MAY ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	John Sipos	3721	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) 19-21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

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|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>1/12, 14 &amp; 3/26/2004</u> . | 6) <input type="checkbox"/> Other: ____.  |

### ***RESTRICTION REQUIREMENT***

Restriction to one of the following inventions is required under 35 U.S.C. 121:

**Group I. Claims 1-18**, drawn to a packaging apparatus, classified in Class 53, subclass 134.1.

**Group II. Claims 19-21**, drawn to a packaging method, classified in Class 53, subclass 417.

The inventions are distinct, each from the other, because of the following reasons:

The inventions of Groups II and I are related as **process and apparatus for its practice**. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP 806.05(e)). In this case the method can be performed by hand and need not use an apparatus as set forth in the claims of Group I.

Because these inventions are distinct for the reasons given above, and because they have acquired a separate status in the art as shown by their different classifications, restriction for examination purposes, as indicated, is proper.

Applicant is advised that the response to this requirement, to be complete, must include an election of the invention to be examined even if the restriction requirement is traversed.

During a telephone conversation between Examiner John Sipos and Mr. J.O. Nelson, attorney of record in this case, on 8/24/04, a provisional election was made with

Art Unit: 3721

traverse to prosecute the invention of Group I comprising claims 1-18. Affirmation of this election must be made by applicant in responding to this Office action. Claims 19-21 are withdrawn from further consideration by the examiner as being drawn to a non-elected invention. (See 37 CFR 1.142(b)). An action on the merits of the elected claims follows.

Applicant is reminded that, upon cancellation of claims to a non-elected invention, the **inventorship must be amended** in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a diligently filed petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(h). Applicant should further **amend the title**, in necessary, to reflect the elected invention.

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### ***REJECTIONS OF CLAIMS BASED ON FORMAL MATTERS***

The following is a quotation of the second paragraph of 35 U.S.C. ' 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

**Claims 6—11 are rejected under 35 U.S.C. ' 112, second paragraph**, as being **indefinite** for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The term “line of movement” is unclear in that it does not specify a direction, e.g. parallel to the chute longitudinal orientation, and therefore the subsequent references to this “line” are also unclear.

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***REJECTIONS OF CLAIMS BASED ON PRIOR ART***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. ' 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

**Claims 1-15 and 18** are rejected under **35 U.S.C. ' 102(e)** as being anticipated by the patent to Ailey (6,729,102). The patent to Ailey shows a product netting machine comprising a base 25, a chute 40, a product receiver 65 with movable guides 72 at the discharge end of the chute, voider gates 48,50 to form a rope section, a handle and loop former 90 comprising of transversely and rotatably moving clamshells 92,94 and clippers 109,111 to clip the rope section of the netting.

The applied reference has a common inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

Art Unit: 3721

**Claims 1 is** rejected under **35 U.S.C. ' 102(b)** as being anticipated by the patent to Evans (4,675,945). The patent to Evans shows a product-netting machine comprising a base 56, a chute 38, a product receiver 160,164 at the discharge end of the chute, voider gates 70-76 to form a rope section, and clippers to clip the rope section of the netting.

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The following is a quotation of 35 U.S.C. ' 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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**Claims 2-6,16 and 17** are rejected under **35 U.S.C. ' 103(a)** as being unpatentable over the patent to Ailey (6,729,102). The use of sensors to automate a packaging operation is well known in the art and it would have been obvious to one skilled in the art to provide Ailey with sensors to increase the efficiency of the operations.

**Claims 2-6,16 and 17** are rejected under **35 U.S.C. ' 103(a)** as being unpatentable over the patent to Evans (4,675,945) in view of May (5,165,216). The patent to Evans lacks a handle forming operation. The patent to May shows a packaging machine which includes a the filling of a tube, forming a rope section, forming the section into a looped handle and clipping the end of the handle. The handle forming mechanism comprises of a shaft 22 that is moved transversely to the rope section to form

Art Unit: 3721

a looped handle. It would have been obvious to one of ordinary skill in the art to provide the device of Evans with a handle forming mechanism as shown by May to form handles to carry the packages. The use of sensors to activate a clipping mechanism (claims 16 and 17) are well known in the art and it would have been obvious to one skilled in the art to provide Evans with a sensor to sense the product and actuate the clipping mechanism to automate the operations.

**Claims 12-15** are rejected under **35 U.S.C. ' 103(a)** as being unpatentable over the patent to Evans (4,675,945) in view of the patent to Klein (3,763,621). The patent to Klein shows a package forming machine comprising a chute 12, a pair clippers 27 and a pair of pivotable guides 40 to firmly hold the package during the discharge and clipping operations. It would have been obvious to one of ordinary skill in the art to provide the Machine of Evans with pivotable guides as shown by Klein to positively hold the package during discharge and clipping operations.

**Claims 18** is rejected under **35 U.S.C. ' 103(a)** as being unpatentable over the patent to Evans (4,675,945) in view of Longo (3,815,323). The Evans patent lacks the use of ribs in the packaging chute. The patent to Longo shows a packaging chute 10 on which the packaging material is placed and ribs 54 inside the chute to guide and compress the product. It would have been obvious to one of ordinary skill in the art to provide the chute of Evans with ribs as shown by Longo to guide and compress the product as it is pushed into the packaging material.

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***ADDITIONAL REFERENCES CITED***

Art Unit: 3721

The cited prior art is made of record but has not been relied upon in the rejection of claims. However, the prior art is considered pertinent to applicant's disclosure.

The patent to Tipper shows a packaging operation with the formation of handles and loops.

The other references show packaging operations with filling of a tube on a chute and clipping of material.

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Any inquiry concerning this communication should be directed to **Examiner John Sipos** at telephone number **(703) 308-1882**. The examiner can normally be reached from 6:30 AM to 4:00 PM Monday through Thursday.

The **FAX** number for Group 3700 of the Patent and Trademark Office is **(703) 872-9302**.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Rinaldi Rada, can be reached at (703) 308-2187.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group Receptionist whose telephone number is (703) 308-1148.

  
**John Sipos**  
**Primary Examiner**  
**Art Unit 3721**

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